LIBRARY
SUPREME COURT, U. S.
APR 3 1969
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1009

JOHNNIE MAE JONES (DANIELS),
Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN,
Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

FRANK J. KELLEY
Attorney General of the State of Michigan

ROBERT A. DERENGOSKI
Solicitor General of the State of Michigan
State Capitol
Lansing, Michigan 48902
and
PAUL M. LADAS,
Prosecuting Attorney of Muskegon County
Muskegon County Building
Muskegon, Michigan 49440
Attorneys for the People of the State of Michigan

Inserters Brief & Record Co., 1926 Franklin St., Detroit, Michigan 48226
WO. 3-5710—WO. 3-5732

TABLE OF CONTENTS

	Page
Opinions Below	2
Counter-Statement of the Case	2-3
Reasons for Denying the Writ	4-7
Conclusion	7

INDEX TO AUTHORITIES

Cooper v. California (1967) 386 U.S. 58, 87 S. Ct. 788, 17 L. Ed. 2d 730	5
People v. Johnnie Mae Jones, 12 Mich App. 369, 163 N.W. 2nd 22	2
Preston v. United States (1964) 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777	6
United States v. Rabinowitz, 339 U.S. 56, 70 S. Ct. 430, 435, 94 L. Ed. 653	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1009

JOHNNIE MAE JONES (DANIELS),
Petitioner,

vs.

PEOPLE OF THE STATE OF MICHIGAN,
Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

The Respondents, the People of the State of Michigan, pray for the denial of the petition for a Writ of Certiorari to issue to review a final decision of the Court of Appeals of the State of Michigan entered in the above-entitled cause on July 23, 1968, application for leave to appeal therefrom having been denied by the Supreme Court of Michigan October 10, 1968.

OPINIONS BELOW

The opinion of the Court of Appeals for the State of Michigan, rendered July 23, 1968, which is sought to be reviewed by this petition for a Writ of Certiorari has been reported since the institution of the petition.

The citation is *People v. Johnnie Mae Jones*, 12 Mich App. 369, 163 N.W. 2nd 22.

COUNTER-STATEMENT OF THE CASE

Between forty-five (45) minutes and one hour elapsed between the time of the arrest of defendant and the search of the defendant's automobile.

Police Lieutenant Arnold VanDam arrived at the scene of the defendant's arrest within minutes after her arrest.

Lieutenant VanDam was the senior command officer at the scene and supervised the investigation.

Between the time of his arrival and the time of his search of the defendant's automobile, he had many duties to perform. He did not idle away any of his time during that interim period. He surveyed the situation at the scene of the burglary; he looked at the jewelry store and noticed that a safe had been taken; he talked briefly with defendant Jones; he briefly checked the defendant's automobile and removed the keys therefrom; he discussed the arrests with the officers; he talked with four witnesses to the burglary; he interviewed the owner of the building burglarized; he made arrangements for preservation of the physical evidence at the scene with crime laboratory experts;

and he directed a search of the area for those persons who had fled the scene of the burglary and escaped the police.

During the latter part of this interim period, and not more than 15 minutes before the questioned search was actually conducted, defendant Jones was ordered to be taken to the police station by Lieutenant VanDam and not the county jail.

The police station is approximately one mile from the scene of the burglary. While enroute to the police station, Lieutenant VanDam by radio ordered defendant Jones returned to where her automobile was. Defendant Jones had not yet arrived at the police station and had not yet been booked. Her automobile had never been moved from the spot where she had been stopped. Defendant Jones was present while her automobile was searched.

Defendant Jones told Lieutenant VanDam that she was at the place where she was arrested because she was looking for a place to repair her automobile. The time of her arrest was 3:30 a.m. Furthermore the nature of Isabella Street should be noted. Getty Street is a well-lighted street with a great deal of commercial buildings such as the burglarized Strong's Jewelry. Isabella is a residential street of the type that commonly run off of a commercial street like Getty. Isabella Street is a dark street and has only residential dwellings situated on it.

Lastly, as of March 24, 1969, defendant Jones has failed to provide the Muskegon County Circuit Court with the medical information regarding Johnnie Mae Jones as demanded by the order of the Michigan Supreme Court of December 12, 1968, which is Appendix H of the Petitioner's brief.

REASONS FOR DENYING THE WRIT

The People of the State of Michigan submit that the opinion of the Court of Appeals is a most thorough analysis of the legal question involved to which little can be added.

However, some additional analyses will be given to further assist the Court in its determination.

The defendant Jones was initially arrested because the police had reasonably believed she was engaged in the commission of a felony.

Within minutes after her arrest, after the facts had been allowed to fall into place, the felony for which she was arrested was confirmed to be breaking and entering with intent to commit larceny.

Subsequently, the police searched defendant Jones's automobile obviously for fruits of the crime for which she had been arrested, instruments with which the crime she was arrested for had been committed, and means by which the crime she was arrested for was committed.

The defendant Jones prior to the search, though in custody, and informed of the charge against her, had never been placed in jail nor had she been booked. She briefly had left the scene and was in a police cruiser enroute to the police station, which is a mile away, when Lieutenant VanDam by radio ordered her returned to the scene of her arrest.

She was present during the search of her automobile which revealed the incriminating evidence. This search of the automobile took place between 45 minutes and one hour after the arrest of defendant. Defendant Jones had left

the scene of her arrest and place of search of her automobile for less than 15 minutes.

Searches of automobiles incident to an arrest have long been permitted. However, police officers cannot be expected to instantaneously search individuals arrested and their automobiles. Other matters must first be attended to. In the case at hand, the police had to organize their actions, take measures to search for and apprehend those burglars who had escaped, collect their thoughts, view the scene of the burglary, and interview witnesses to the burglary.

The police should be allowed an opportunity to gain a perspective on the crime for which they had arrested the defendant so that they could conduct their search in a halfway intelligent manner.

The most recent and ruling decision by the United States Supreme Court on the question of searches of an automobile of a defendant who has been arrested is *Cooper v. California* (1967) 386 U.S. 58, 87 S. Ct. 788, 17 Led. 2d 730.

In that case, the Court reasserted the test of "reasonableness" in determining the validity of a search and seizure: "'(t)he relevant test is not whether it is reasonable to procure a search warrant but whether the search was reasonable', *United States v. Rabinowitz,* 339 U.S. 56, 70 S. Ct. 430, 435, 94 L. Ed. 653."

Applying the test of reasonableness, it is submitted that the Court of Appeals of the State of Michigan was correct in affirming the search and seizure by the Muskegon Police.

In fact, the search in the case at hand is even more reasonable than the search validated in the *Cooper* case because here the search was within an hour of the defendant's arrest and before incarceration, whereas the search and seizure in *Cooper* was a week after the defendant had been incarcerated. Indeed, in the *Cooper* case, the State of California conceded that the questioned search and seizure was not even incident to the arrest of the defendant. The more favorable circumstances of reasonableness in the case at hand would probably satisfy the four dissenting judges in the *Cooper* case who protested that that search was not incident to and was most remote to the defendant's arrest.

Furthermore, allowing the presence of the defendant at the time of the search further adds to the reasonableness of the search since it permits the defendant to reconstruct the search to her counsel.

Petitioner-defendant Jones cites the case of *Preston v. United States* (1964) 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777, as support for allowance of his petition, implying that the decision of the Michigan Court of Appeals is not in accord with it.

This is not so. In *Preston,* the defendant was arrested for vagrancy, a crime unrelated to the purpose of the search of his automobile. In the case at hand the purpose of the search was most related to the offense for which the defendant had been arrested.

In *Preston,* the defendant had already been booked and incarcerated when the automobile was searched. Furthermore, the automobile had been removed from the scene of arrest. These unfavorable circumstances are not present in the case at hand.

The decision of the Court of Appeals of the State of Michigan is well in accord with all past applicable decisions of the United States Supreme Court.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

FRANK J. KELLEY,
Attorney General of the State of Michigan

ROBERT A. DERENGOSKI
Solicitor General of the State of Michigan
State Capitol
Lansing, Michigan 48902
and
PAUL M. LADAS,
Prosecuting Attorney of Muskegon County
Muskegon County Building
Muskegon, Michigan 49440
Attorneys for the People of the State of Michigan